IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 401/2006
(Ladu Lal Vs. State of Rajasthan & Anr.)

Date of Order : 21/11/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Sandeep Mehta for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.
Mr. Sahdev Singh for the non-petitioner No.2.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 23.1.2006 passed by Additional Sessions Judge No.3, Udaipur (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioner against the order dated 30.6.2005 passed by Additional District Judge, Udaipur (for short 'the Executive Magistrate' hereinafter) was dismissed.

I have heard learned counsel for the parties. Carefully gone through the orders passed by both the courts below.

The facts and circumstances giving rise to the instant petition are that non-petitioner Laxman Singh filed a complaint before Executive Magistrate on 23.10.2002 alleging therein that he along with other persons are residing in residential colony Central Area, near Radaji Bawji, Udaipur. The petitioner is also having a plot in the said area in which the petitioner have his firm in the name and style of M/s Roshanlal Jain & Co. dealer of M/s Usha Martin Crane and by using heavy machines, the iron cutters, loading and unloading of heavy machines and iron articles have caused the public nuisance. There had been damage to the houses of the persons in the locality, sound pollution, disturbance to the students by the sound pollution and air pollution etc. The Executive Magistrate issued notice to the petitioner. Parties led evidence before the Executive Magistrate. By order dated 30.6.2005, the Executive Magistrate came to the conclusion on the appreciation of the evidence produced by the parties as also report of the Tehsildar, Pollution Control Board, that the work undertaken by the petitioner in a residential colony by running a factory as also using iron cutter, loading and unloading of heavy machines etc. caused public nuisance and accordingly directed the petitioner to remove the public nuisance within three months by shifting his factory elsewhere in industrial area. That order came to be challenged by the petitioner before the revisional court. On re-consideration of the material

available on record, by a detailed and well reasoned order, the revisional court came to the conclusion that the conclusion arrived at by the Executive Magistrate is just and proper warranting no interference.

Learned counsel appearing for the non-petitioner complainant has relied on a decision of this Court in Laxmi Chand Vs. State of Rajasthan, 2005 (1) CJ (Raj.) Cr. 561, wherein on identical facts, this Court held that Section 133 Cr.P.C. authorizes action by the magistrate if a trade in question is injurious to physical comfort of the community. The magistrate is required to satisfy that the interference with the public comfort is considerable and that the public is affected injuriously. The scope of Section 133 Cr.P.C. is that the public health cannot be allowed to suffer on account of personal business of any individual, relying on a decision of this Court in Smt. Ajit Mehta Vs. State of Rajasthan 1989 (1) RLW 598 wherein this Court dealing with a complaint of stocking of fodder on a plot in a residential colony, held that it caused pollution of atmosphere and the magistrate can direct removal of such nuisance and the persons who are doing, may be directed not to do any business of fodder on that plot.

In the instant case, both the courts below concurrently found that the petitioner by running a factory with heavy machines, iron cutter, has been causing public nuisance,

and therefore, the concurrent finding of fact recorded by the courts below, in my view, warrants no interference in the inherent jurisdiction under Section 482 Cr.P.C.

In this view of the matter I do not find any merit in the criminal misc. petition. The petition is therefore, dismissed.

(H.R.PANWAR),J.

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